BILL G. MINTON
MARYLEE MINTON

IBLA 85-341 Decided March 14, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting application for correction of conveyance documents CA 16555.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Correction of Conveyance Documents--Patents of Public Lands: Corrections

Where one holding a patent from the United States applies to have the patent corrected to eliminate a reservation in accordance with sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1982), alleging that the purpose for the reservation no longer exists, the application is properly rejected where the record shows the reservation was not erroneously included in the patent on the basis of a mistake of fact.

APPEARANCES: Lawrence M. Whitfield, Esq., Redding, California, for appellants; Burton J. Stanley, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On May 8, 1972, the United States issued patent No. 04-72-0109 to Arnold S. Rummelsburg and Bill G. Minton, pursuant to the Isolated Tract Act, 43 U.S.C. § 1171 (1970) (repealed by section 703(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2789-90).

The patent conveyed the following described land:

Mount Diablo Meridian, California
T. 31 N., R. 5 W.
Sec. 18, Lot 8

Containing 15.73 acres

The patent also reserved

> to the United States of America, and its assigns, a perpetual easement and right-of-way, including but not limited to the right and privilege, in the public, to use same, and to locate, construct, relocate, maintain, control, and repair a road and public utility facilities, situated on the westerly 60 feet of Lot 8.

Subsequently, Rummelsburg and Minton conveyed the land to Minton and his wife, MARYLEE.

On October 25, 1983, Bill Minton filed an application pursuant to section 316 of FLPMA, 43 U.S.C. § 1746 (1982), seeking correction of patent No. 04-72-0109 to eliminate the reserved easement and right-of-way, indicating that the purpose for the reservation no longer existed.

On December 31, 1984, the California State Office, Bureau of Land Management (BLM), issued a decision rejecting that application. BLM stated that under 43 U.S.C. § 1171 (1970) parcels were to be sold at not less than their appraised value, and the grantees were aware of the reservation and insisted on a diminution of the appraised value to reflect the reservation. BLM found removal of the reservation was not a proper action under section 316 of FLPMA because that section provides for correction of patents to eliminate errors, and no error was made. Moreover, BLM stated the reservation had a value as real property and approval of the application would constitute disposal of a real property interest the United States had determined to retain.

The Mintons filed a timely appeal. They argue BLM has given an unreasonably restrictive reading to section 316 of FLPMA and in any event there was both an existing error at the time of conveyance in that the area described in the reservation was, in fact, unusable for a right-of-way because of topographic features, and, in the alternative, a subsequently discovered error was the determination that there was no need for the reservation.

Appellants claim it is BLM policy to convey unneeded interests in land to the underlying landowner and that payment is necessary only when the interest has some significant fair market value, citing BLM Manual section 2139. Appellants state that to the best of their knowledge BLM "has made no current determination that the reservation has value" (Statement of Reasons at 4). BLM's interpretation of section 316 of FLPMA, appellants argue, seriously limits the use, value, and enjoyment of the property.

In response BLM asserts the record does not support appellants' allegation of error. It contends that a $ 600 reduction in the appraised value of the property was made in recognition of the reservation and that grantees understood the nature of the reservation, its contemplated purpose, its value, and were aware of its location. BLM acknowledges the existence of a May 11, 1984, memorandum from the District Manager, Ukiah, to the State Director stating that the reservation was made in error and has no value. It states that conclusion was erroneous and not adopted by the State Director.

It is not the policy of BLM to convey unneeded interests in land to the underlying landowner, BLM argues, and BLM Manual section 2130 was obsolete as of September 1984. 1/ BLM concludes that the reservation constitutes a present real property interest of the United States and is not subject to disposition by a patent correction.

[1] Section 316 of FLPMA, 43 U.S.C. § 1746 (1982), provides:

> The Secretary may correct patents or documents of conveyance issued pursuant to section 1718 of this title or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

The regulations promulgated to implement section 316 of FLPMA define "error" as

> the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law.

43 CFR 1865.0-5(b). 2/

Although appellants assert error at the time of the issuance of the patent because the "topographic features" of the land reserved made the reservation unusable, the record does not support this assertion. The rationale for the reservation was set forth by the Redding District Manager in attachment 1 to a December 27, 1971, memorandum to the BLM State Director in which he stated:

> The above reservation is intended to be an airtight, enforceable reservation for the perpetual right of public access by foot, horse, or vehicle along a 60 foot wide strip of land lying in Lot 8 adjacent to the west boundary of Lot 8.
>
> It is further intended that the above reservation will also provide a route for public utilities. [3/]

1/ Although appellants cited section 2139, the BLM Manual does not contain such a section. BLM is correct that section 2130 "Acquisition of Lands or Interests in Lands by Purchase or Condemnation" was removed from the Manual as outdated on Sept. 30, 1984.

2/ These regulations were published Sept. 6, 1984, with an effective date of Oct. 9, 1984. 49 FR 35296 (Sept. 6, 1984).

3/ The record shows the grantees were intimately familiar with this land prior to their purchase of it from BLM. If due to topography the reservation was "unusable," they should have pointed this out prior to patent.

However, the record also contains a May 11, 1984, memorandum from the Ukiah District Manager to the BLM State Director which states "the right-of-way reservation was made in error and has no value to the United States. The patent should be corrected to remove the right-of-way reservation." There is no documentation in the record to support this conclusion, and BLM states on appeal that it was not adopted by the State Director. A September 19, 1984, memorandum from the Redding Area Manager to the State Director states:

> Further research into the original reasoning behind the Bureau's request for this easement reservation in the Minton-Rummelsburg patent has definitely revealed that this easement is not needed by the BLM or Shasta County. Prior to the time of this sale, mid-1960's, Shasta County was analyzing alternative routes to upgrade the location of Swasy Drive. This easement location covered part of one of the alternatives. Swasy Drive was reconstructed in the early 1970's in basically its original location, not requiring any of the easement that was reserved in the Minton patent. As stated in earlier correspondence, this easement is not required for any public use and should be abandoned. [4/]

This memorandum does not state the reservation was made in error. At best, it supports a conclusion the reservation is no longer necessary. The fact that it may no longer be necessary does not mean the reservation is "error" within the meaning of the applicable regulations, however.

The regulations at 43 CFR Subpart 1856 are the Secretary's rules for implementation of section 316 of FLPMA. The short answer to all of appellants' arguments is that appellants have not presented a claim which is

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fn. 3 (continued)
However, since this document indicates the intent was to preserve public access by foot, horse, or vehicle, it seems unlikely that topographic features would make the reservation unusable for all those modes of transportation.

4/ This same memorandum stated "Mr. Minton's request for a patent correction will be changed to a disclaimer of interest according to the new regulations 43 CFR parts 1820 and 1860." BLM sought the opinion of the Regional Solicitor, Pacific Southwest Region, regarding consideration of CA 16555 as a request for a recordable disclaimer of interest. By memorandum dated Nov. 21, 1984, that office informed the State Director this was not an appropriate case for issuance of a recordable disclaimer of interest. The basis for that conclusion was that the interest reserved was a present interest which had been properly reserved, and 43 CFR 1864.0-2(b) provides that "a disclaimer does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in lands." The memorandum concluded the regulations would not permit use of a disclaimer to convey an easement held by the United States to the holder of the underlying fee.

The BLM decision also considered appellants' application as one for a recordable disclaimer and found that sec. 315 of FLPMA, 43 U.S.C. § 1745 (1982), does not authorize the issuance of recordable disclaimers to convey real property. Appellants did not pursue this issue on appeal.

cognizable under those regulations. Those regulations provide relief for inclusion of erroneous reservations in patents based on mistakes of fact. The reservation in this case was not included in the patent erroneously, based on a mistake of fact. BLM properly denied the request for a correction of the patent.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge.